

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

|   |   |                                     |
|---|---|-------------------------------------|
| <b>IN RE PHARMACEUTICAL INDUSTRY<br/>AVERAGE WHOLESALE PRICE LITIGATION</b> | ) | <b>MDL No. 1456</b>                 |
|   | ) | <b>Master File No. 01-12257-PBS</b> |
|   | ) | <b>Judge Patti B. Saris</b>         |
|   | ) |                                     |
| <b>THIS DOCUMENT RELATES TO:</b>  | ) |                                     |
| <b>State of California, ex rel. Ven-A-Care v.</b>                           | ) |                                     |
| <b>Abbott Laboratories, et al.</b>  | ) |                                     |
| <b>CASE #: 1:03-cv-11226-PBS</b>  | ) |                                     |
|   | ) |                                     |

**STATE OF CALIFORNIA’S AND RELATOR’S WITHDRAWAL OF PENDING  
MOTIONS TO REMAND AND TO DISMISS MEDICAID REBATE FRAUD CLAIMS  
WITHOUT PREJUDICE**

Plaintiffs, State of California (“California”) and Relator, Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”), have decided to pursue their pharmaceutical fraud pricing claims including, but not limited to, those based on manipulation of the AWP (“drug pricing claims”) and fraud claims relating to the federal Medicaid Rebate Program (“drug rebate claims”) in MDL 1456 before this Court. Therefore, plaintiffs hereby withdraw their previous motion to remand the case to California state court and further withdraw their motion to dismiss the drug rebate claims in this cause.

For the Court’s reference, the following includes a summary of the procedural history leading up to this withdrawal of the aforementioned motions.

1.) Following a September 18, 2003 hearing, the Court denied the motion to remand filed by California and the Relator [437], without prejudice, due to the pendency of the drug rebate claims which remained in the Relator’s sealed complaint in this state law *qui tam* action. This

Court's ruling appears in Master Docket entries on September 18 and 30, 2003, and appears to have been entered on October 7, 2003.

2.) On October 17, 2003, California and the Relator requested leave to dismiss the pending drug rebate claims, without prejudice, and renewed their motion to remand [585]. Defendants Abbott and Wyeth opposed this motion.

3.) In a hearing held on December 12, 2003, the Court indicated that a ruling on the motion to remand the California case should not be made until after the Court's determination of the federal preemption issue in connection with Medicaid rebate fraud claims brought by the States of Nevada and Montana. The Court has since determined that the state Medicaid rebate fraud claims are not preempted by federal law. Therefore, California is free to pursue its drug rebate claims.

4.) Accordingly, plaintiffs hereby withdraw their motion to remand, withdraw their request to dismiss the drug rebate claims, and will pursue their drug pricing claims and drug rebate claims in this Court.

5.) California and the Relator intend to file an amended complaint-in-intervention, pursuant to the Federal Rules of Civil Procedure, which will supersede the original complaint-in-intervention filed against defendants Abbott and Wyeth in California state court on January 7, 2003.

6.) Additionally, the Attorney General of California will file additional motions, under seal, as are necessary to fully and effectively prosecute this case under the California False Claims Act (Cal. Gov't. Code §§12650, et seq.). Also, the Plaintiffs will request a status conference and the entry of a case management order by separate motion.

Respectfully submitted,

BILL LOCKYER  
Attorney General for the State of California

Dated: September 29, 2004

/s/ Brian Frankel

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### **CERTIFICATE OF SERVICE**

I, Jonathan Shapiro, hereby certify that on September 29, 2004, I caused a true and correct copy of the foregoing, STATE OF CALIFORNIA'S AND RELATOR'S WITHDRAWAL OF PENDING MOTIONS TO REMAND AND TO DISMISS MEDICAID REBATE FRAUD CLAIMS WITHOUT PREJUDICE, to be served on all counsel of record by electronic service pursuant to paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification of all parties and by mailing a true and correct copy to:

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